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Financing of the United Nations Peacekeeping Force in Cyprus

Report of the Secretary-General on the activities of the Office of Internal Oversight Services

Note by the Secretary-General

1. Pursuant to General Assembly resolution 51/235 of 13 June 1997, the Secretary-General has the honour to transmit, for the attention of the General Assembly, the attached report, conveyed to him by the Under-Secretary-General for Internal Oversight Services, on the termination benefits paid to the locally employed civilians in the United Nations Peacekeeping Force in Cyprus.

2. The Secretary-General takes note of the report's findings and concurs with its recommendations.

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Annex

Report of the Office of Internal Oversight Services on the termination benefits paid to the locally employed civilians in the United Nations Peacekeeping Force in Cyprus

Summary

In its resolution 51/235 of 13 June 1997, on the financing of the United Nations Peacekeeping Force in Cyprus (UNFICYP), the General Assembly requested the Secretary-General to direct the Office of Internal Oversight Services (OIOS) to evaluate and report to the Assembly on the events and circumstances that led to United Nations responsibility for termination pay to the locally employed civilians in the Force, including all aspects of accountability and responsibility of United Nations staff. The Assembly was referring to an amount of $5,284,000 in the proposed budget for UNFICYP from 1 July 1997 to 30 June 1998, representing the United Nations share of the one-time cost of termination benefits and redundancy payments for 304 former locally employed civilians in Cyprus.

Payment of the termination benefits became an issue between the United Nations and the United Kingdom of Great Britain and Northern Ireland after November 1994 when the United Kingdom officially notified the United Nations that it had decided, effective the end of June 1995, to cease providing the contractual services for local support staff which had been agreed to as part of the Memorandum of Understanding between the United Nations and the United Kingdom of 11 December 1979. UNFICYP administration was under pressure to maintain the continuity of day-to-day operations and several options that would have allowed it to provide such services were considered by the Department of Peacekeeping Operations in consultation with the Office of Human Resources Management of the Department of Management. The option that was selected by the Office of Human Resources Management in early 1995 was to convert locally employed civilians to the status of locally recruited United Nations General Service staff by instructing the United Kingdom to terminate all contracts for locally employed civilians with the United Kingdom Civilian Establishment and Pay Office. Subsequently, UNFICYP rehired the locally employed civilians based on proven performance at the levels established through a custom-designed classification process. Once the decision to terminate the locally employed civilians was conveyed to the United Kingdom, it began paying termination benefits to them according to the Civilian Establishment and Pay Office's agreements with the them.

Differences emerged over who was responsible for payment of the termination benefits to the locally employed civilians, the United Nations or the United Kingdom. The United Nations took the position that as the issue was generated by the United Kingdom's decision to withdraw from providing those services, the cost should be based on the same cost-sharing formula that was applied to locally employed civilians salaries and other staff costs,

including termination payments to individual locally employed civilians who had been terminated during the life of the Memorandum of Understanding. The United Kingdom's position was that the United Nations was responsible for the totality of the termination payments, as the decision to terminate was made by the United Nations.

The negotiations between the United Nations and the United Kingdom continued into 1997, when the parties agreed to a settlement of the issue, and the cost-sharing formula was the mechanism for the settlement of the dispute.

OIOS did not find any impropriety in the actions of the United Nations staff members. Nevertheless, in its view, important "lessons learned" emerge:

- Firstly, in large measure, the problem was caused by lack of precision in the four-page Memorandum of Understanding (inclusive of the two-page annex). The respective obligations of the two parties for the contractual employees' various benefits and entitlements, including termination benefits, were not defined. This allowed for contradictory interpretations by the parties. Therefore, OIOS recommends to the Department of Management and the Department of Peacekeeping Operations that in the future either the United Nations enter into memorandum of understandings that provide the details of the agreement between the parties or, alternatively, that additional written agreements be prepared within the framework of the terms of the memorandum of understandings that so provide;

- Secondly, as legal and financial issues were apparent at the initial stage of problem definition and consideration of options, it would have been advisable for UNFICYP/Department of Peacekeeping Operations to have obtained assessments of possible legal and financial liabilities to the Organization from the Office of Legal Affairs and from the Office of Programme Planning, Budget and Accounts, respectively. Therefore, OIOS recommends to the Department of Management and the Department of Peacekeeping Operations that in the future programme managers faced with issues that have significant legal and financial implications consider the benefits of early consultation with the Office of Legal Affairs and the Office of Programme Planning, Budget and Accounts. An integrated approach to decision-making is likely to enhance comprehensive determination of financial and legal risks faced by the Organization and to offer a broader range of options to solve problems.

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I. Introduction

1. In its resolution 51/235 of 13 June 1997 on the financing of the United Nations Peacekeeping Force in Cyprus (UNFICYP), the General Assembly requested the Secretary-General to direct the Office of Internal Oversight Services (OIOS) to evaluate and report to the Assembly on the events and circumstances that led to United Nations responsibility for termination pay to the locally employed civilians in the Force, including all aspects of accountability and responsibility of United Nations staff. The Assembly was referring to an amount of $5,284,000 in the proposed budget for UNFICYP from 1 July 1997 to 30 June 1998, representing the one-time cost of terminal benefits and redundancy payments for 304 former locally employed civilians in Cyprus.

2. In the course of its investigation, OIOS reviewed available relevant documents and conducted interviews with United Nations staff members, in person for those at Headquarters and by telephone with staff in the field.

3. *The comments provided by the concerned departments, the Field Administration and Logistics Division of the Department of Peacekeeping Operations, the Department of Management and the Office of Legal Affairs, to the OIOS draft report have been fully taken into account and are reflected in the following text.*

II. Historical and organizational context

4. When UNFICYP was established in 1964 in accordance with Security Council resolution 186 (1964) of 4 March 1964, the costs of the Peacekeeping Force were met by the Governments providing the military contingents and by voluntary contributions received for that purpose by the United Nations. Under those arrangements, the troop-contributing Governments were responsible for costs such as the troops' regular pay and allowances and normal *matériel* expenses, while the United Nations was responsible for the operational costs for administrative and logistic support (e.g. rations, fuel, vehicles, maintenance of premises, salaries and travel of non-military personnel) and for extraordinary costs incurred by the troop-contributing Governments. The costs incurred by the United Nations were paid from voluntary contributions received for that purpose. Voluntary contributions, however, had consistently fallen short of the required amount. The Secretary-General had repeatedly voiced his concern about the worsening financial situation confronting UNFICYP and proposed that the Force be put on a sound and secure financial basis by changing its funding to assessed contribution. In its resolution 831 (1993) of 27 May 1993, the Security Council decided that those costs of the Force which were not covered by voluntary contributions should be treated as expenses of the Organization and assessed accordingly, effective 15 June 1993.

5. Under the Memorandum of Understanding between the United Nations and the United Kingdom of Great Britain and Northern Ireland, signed on 11 December 1979, which formalized a long-standing agreement between the United Nations and the United Kingdom, it was agreed that a large part of UNFICYP logistics support would be supplied by the British Forces in Cyprus. The Government of the United Kingdom agreed to "continue to provide for members of the British contingent, at no cost to the United Nations, all the logistic support that it would normally provide if they were serving in field conditions under United Kingdom command" (para. 3 of the agreement) and "to provide to the other elements of UNFICYP, *at United Nations expense, unless otherwise indicated*, the logistic support listed and defined in the Annex to [the] Memorandum of Understanding" (emphasis added, para. 4 of the agreement). As part of those logistic support arrangements, the United Kingdom Command Secretariat, through its own Civilian Establishment and Pay Office, provided to UNFICYP all of the locally employed civilians, with all costs plus administrative fees charged to UNFICYP.

6. Reimbursement of the cost of the locally employed civilians' salaries and other benefits to the United Kingdom by the United Nations was not described in detail in the Memorandum of Understanding. Subsequently, then, after discussion between the parties it was agreed that salaries would be paid on a cost-sharing basis proportional to the function and work assigned to each post, whether for the British contingent, to be paid by the United Kingdom, or "other elements", to be paid by UNFICYP. The cost-sharing formula was applied to four categories of posts: (a) posts funded 100 per cent by the United Nations; (b) posts funded 70 per cent by the United Kingdom and 30 per cent by the United Nations until 15 June 1993; (c) posts funded 100 per cent by the United Kingdom until 15 June 1993; and (d) posts funded by two or more categories (as a result of a change in functions). Under the contractual arrangements made between the United Kingdom Command Secretariat and the locally employed civilians, the latter were entitled to, in addition to the basic salary, a cost of living allowance, overtime pay and allowances, as well as an annual bonus equal to one month's salary, gratuities and redundancy (or

termination) pay. Those benefits and entitlements were structured differently from those of locally recruited staff in other United Nations peacekeeping missions as they were based on Civilian Establishment and Pay Office regulations, rather than United Nations rules and regulations.

7. At the time of the change in funding, in June 1993, the United Kingdom Command Secretariat had suggested in discussions and correspondence with UNFICYP management that it wished to reduce its involvement in providing logistic services to UNFICYP. However, it was not until October 1994 that the United Kingdom's substantive decision to cease providing contractual logistic services to UNFICYP was communicated to the Force. In the course of a meeting with the Chief Administrative Officer of UNFICYP, representatives of the United Kingdom announced their Government's intention to stop providing the administration and payroll functions for locally employed civilians to UNFICYP by the end of March 1995. By a letter dated 21 November 1994, the Mission of the United Kingdom to the United Nations notified the United Nations that the United Kingdom intended to cease providing the above-mentioned services as at 30 June 1995. That date, which coincided with the end of the UNFICYP six-month mandate period, in effect gave the United Nations seven months' notice to develop transitional arrangements for the final handover of responsibilities. The reason provided by the United Kingdom for ceasing provision of the service was that it was neither cost-effective for the United Nations, which was being charged 3 per cent and 4 per cent respectively for administrative and debtors' enhancement fees, nor appropriate for the United Kingdom to continue to provide this service 18 months after UNFICYP had become a standard United Nations peacekeeping mission.

III. Sequence of actions that led to the payment of termination benefits

8. During the course of the transitional seven months, UNFICYP and the Field Administration and Logistics Division were confronted with the problem of how to maintain continuity of general support services, which, effective 15 June 1993, were funded from assessed contributions. From the documentation on record, including exchanges of correspondence between UNFICYP and the United Kingdom Command Secretariat and between UNFICYP and Headquarters, it is clear that UNFICYP and the Field Administration and Logistics Division were faced with the problem of maintaining the continuity of its mandated mission in Cyprus and could not do so without logistical support personnel. For the mission, the withdrawal of the Civilian Establishment and Pay Office foretold a "personnel requirement" problem but, in that context, the issue of termination payments was not immediately perceived as predominant.

9. Following the change in UNFICYP funding, the Chief Administrative Officer of the Force attempted to negotiate with the Command Secretariat with regard to their organizations' respective obligations for the entitlements of locally employed civilians on board by 15 June 1993. OIOS noted that this initiative by the Chief Administrative Officer was consistent with the terms of his job description, authorizing the incumbent of the post to "negotiate with the United Kingdom Command Secretary for logistic support of 7 millions per year". In a memorandum dated 30 June 1993 addressed to the Command Secretary, the Chief Administrative Officer stated:

> "When locally employed civilians separate from service, the United Nations will accept responsibility for entitlements accrued since 16 June 1993. In so far as entitlements accrued up to and including 15 June 1993 are concerned, the United Nations will accept its portion of the cost of gratuities pro-rated according to whether the individual was 100 per cent United Nations-funded or 70 per cent United Kingdom/30 per cent United Nations cost-shared. We would look to the United Kingdom to accept pro-rated costs in accordance with the same criteria (100 per cent United Kingdom funded or 70 per cent United Kingdom/30 per cent United Nations cost-shared)."

It appears that the above position was not accepted by the Command Secretariat, which replied, "effective 16 June 1993, ... all locally employed civilians at UNFICYP are employed by the United Nations and the United Nations must take full and financial responsibility for any decision after that time to make these staff redundant" (Command Secretary's memorandum of 3 August 1993).

10. In October and November 1994, there was an exchange of correspondence between the UNFICYP Chief Finance Officer and the Deputy Command Secretary. The United Kingdom summarized its position as follows:

> "Prior to 16 June 1993, the terminal benefits for locally employed civilians who left employment were apportioned according to the cost-sharing arrangement in place at the time. Similarly, when reassessments of terminal benefits are paid to staff who left before 16 June 1993, the costs are shared between the United Nations and the United Kingdom. However, with

effect from 16 June 1993, all terminal benefit costs for United Nations locally employed civilians fall to the United Nations and all terminal benefit costs for United Kingdom locally employed civilians fall to the United Kingdom. Exceptionally, the Command Secretary has accepted that where United Nations locally employed civilians are made redundant as a result of unilateral United Kingdom action, the United Kingdom will meet the cost of redundancy payments."

In January 1995, the Chief Administrative Officer stated in a memorandum to the Command Secretary:

"It was not agreed that, effective 16 June 1993, UNFICYP would assume responsibility for meeting 100 per cent of the cost of entitlements and termination benefits which had accrued prior to 16 June 1993 by cost-shared locally employed civilians who would in due course separate from service as a result of regular retirement/resignation. It is expected that these costs will be pro-rated between the United Kingdom and the United Nations in the same proportion as salaries were previously cost-shared."

11. Shortly after being informed of the United Kingdom's decision to withdraw its contractual services, the Chief Administrative Officer of UNFICYP referred the matter to the Acting Director of the Field Administration and Logistics Division for advice in a confidential memorandum dated 21 November 1994. In that memorandum, the Chief Administrative Officer outlined the following three options for obtaining the services currently provided by the locally employed civilians: (a) to take over the contract from the Civilian Establishment and Pay Office ; (b) to introduce a new contractual arrangement for provision of local staff; and (c) convert the locally employed civilians to locally recruited General Service staff. The Chief Administrative Officer also assessed the above-mentioned options in terms of their feasibility and practicality. With respect to the selection of the first option, the Chief Administrative Officer noted that it would be the most cost-effective arrangement. However, she identified two major obstacles to the option: (a) incompatibility between the Civilian Employment Regulations affecting the salaries, benefits and work conditions of the locally employed civilians under their Civilian Establishment and Pay Office contracts and the salaries, benefits and work conditions under United Nations rules and regulations; and (b) inability to enter into negotiations with the local trade unions under United Nations Staff Rules and Regulations.

12. The Chief Administrative Officer considered that the second option was similarly not feasible, primarily because it was unlikely that UNFICYP could find one agency that would be willing to act as a labour contractor for so many occupational groups.

13. With respect to the option involving securing a private labour contractor, the Chief Administrative Officer said that she was familiar with the local labour market and had never heard of an entrepreneurial agency in Cyprus that would provide such a service. She acknowledged, however, that she had not explored the matter further, by requesting bids, for example. When interviewed about the same issue, the current Chief Administrative Officer said that it would have been highly unlikely for UNFICYP to obtain a labour contractor who would have agreed to provide contractual labour for the various occupational groups needed for logistic support. However, even though the decision to contract out those functions could have achieved savings in labour costs – as the local salaries were considerably lower than the salaries paid by the Command Secretariat to locally employed civilians – she further stated that if the objective of contracting those support services was to assign the Civilian Establishment and Pay Office contract to a private labour contractor to avoid termination/redundancy procedures, that option would have been neither feasible nor cost-effective; no labour contractor would have agreed to pay workers higher salaries than those offered by local employers. Furthermore, it would have constituted a major departure from the human resources policies of the Organization.

14. Having assessed the first two options to be impractical, the Chief Administrative Officer, in her memorandum of 21 November 1994, recommended the third option, that is, conversion of locally employed civilians to locally recruited United Nations General Service staff. In support of that option, she noted that there was a good pool of qualified personnel available in the local market, including many of the locally employed civilians then on board.

15. The issue of termination benefits was raised by the Chief Administrative Officer in the above-mentioned memorandum in the following contexts: (a) to alert the Field Administration and Logistics Division that the United Nations might have to share the costs of termination benefits, applying the same ratio as had been used for determining the share of costs between the United Nations and the United Kingdom for the salaries of locally employed civilians during the period of funding by voluntary contributions, to 15 June 1993; (b) to suggest that the United Nations might wish to conclude an agreement with the United Kingdom with regard to cost-sharing termination benefits; and (c) in connection with a proposal to hold accrued entitlements of locally employed civilians in escrow. The suggestion to hold accrued entitlements in escrow was

based on the assumption that there would be a conversion of contractual status from locally employed civilian to United Nations local recruitment, which, in turn, would pre-empt the need to apply redundancy/termination procedures. However, that option was deemed impractical as it would cause UNFICYP to have two different categories of entitlements to administer – those under United Nations personnel rules and those under a variation of Civilian Establishment and Pay Office rules. In addition, the value of accrued entitlements at the time of separation would have been even more costly to the Organization.

16. In December 1994, the Acting Director of the Field Administration and Logistics Division referred the three possible options to the Office of Human Resources Management, requesting its views. The Chief of the Compensation and Classification Service of the Office, in a memorandum dated 25 January 1995 to the Director of the Staff Administration and Training Division, provided an assessment of those three possible approaches. Option 1, taking over the existing contract from the Civilian Establishment and Pay Office by introducing new contractual agency arrangements for provision of local staff, was not recommended, given the uncertainties surrounding contractual personnel as a result of concerns expressed by the General Assembly during its forty-ninth session, which reflected the position taken by the Advisory Committee on Administrative and Budgetary Questions in its report (A/49/664, para. 72).

17. In that memorandum, the Chief of the Compensation and Classification Service had considered also the above-mentioned suggestion by the Chief Administrative Officer of UNFICYP to hold accrued entitlements in escrow for those staff members who were willing to serve in UNFICYP and who had a proven record of good performance. In that connection, the Chief of the Compensation and Classification Service concluded that "this option may alleviate a financial burden to UNFICYP under the termination formula; however, [it] could not confer any legal grounds for possible future claims of current locally employed civilians against the United Nations Joint Pension Fund". Referring to that statement, he was asked in the course of an interview with OIOS why theOffice of Human Resources Management had not recommended that the option of deferring the payments to a future date or putting the termination payments in escrow for those locally employed civilians who were given United Nations contracts be fully explored. His response was that his advice to the Field Administration and Logistics Division in January 1995 had been based on his past experience that the best approach in establishing new personnel arrangements was to achieve a "clean break" with past contractual arrangements; further, the best way to achieve that objective was to pay off all obligations arising from the previous Civilian Establishment and Pay Office contractual arrangements. He noted that to carry forward obligations arising under the contract with the Civilian Establishment and Pay Office might have introduced a future liability for the Organization for the entire cost of the termination benefits and would have made the administration of those contracts more complicated. The Chief Administrative Officer did not pursue the option of placing the entitlements in escrow because she had decided to follow the advice provided by the Office of Human Resources Management.

18. Thus, two alternatives of the third option were considered: (a) automatic conversion of all locally employed civilians into the United Nations General Service and related categories on the basis of their current salaries; and (b) termination of all locally employed civilians under the Civilian Establishment and Pay Office contract and subsequent rehiring based on proven performance at levels established through a classification process. The first alternative was not deemed acceptable as it would have entailed exceptions to the Staff Rules and would have created confusion and inconsistency in determining the appropriate levels of remuneration. The Chief of the Compensation and Classification Service concluded in his memorandum as follows:

> "Accordingly, I would recommend starting with a *tabula rasa*, i.e., terminate all locally employed civilians in accordance with the current contract on the basis of the 30/70 cost-sharing formula agreed by the United Nations and United Kingdom; pay the attendant termination benefits and allowances; and hire the most competent and efficient staff as locally recruited staff in the General Service and other categories."

He concluded that "a 'clean break' from past policies and practices, though difficult, is preferable". This advice was communicated to the Acting Director of the Field Administration and Logistics Division.

19. Following this assessment, the approach selected by the Office of Human Resources Management was implemented by the Department of Peacekeeping Operations. This approach included the following steps: (a) terminating all locally employed civilians on the basis of the 70/30 per cent cost-sharing formula agreed by the United Nations and United Kingdom; (b) paying the attendant termination benefits and allowances; and (c) rehiring the most competent and efficient staff as locally recruited staff in the General Service and other categories.

20. Based on the instructions received from United Nations Headquarters, by memorandum dated 8 May 1995, the Chief Administrative Officer of UNFICYP instructed the Command Secretary to terminate all locally employed civilian contracts. She stated that she had distributed to all locally employed civilians a memorandum informing them that all locally employed civilian contracts would be terminated on 30 June 1995; all attendant termination benefits and allowances applicable under the Civilian Establishment and Pay Office contract provisions would become payable to each locally employed civilian on board at UNFICYP at that date; and completely new United Nations contracts would be issued effective 1 July 1995. In the same memorandum, the Chief Administrative Officer also stated that there would be no "carry-over or transfer of any entitlements or benefits from one system to the other". By a memorandum dated 22 May 1995 to the Deputy Command Secretary, the Chief Administrative Officer further elaborated on the issue of termination benefits, confirming that "all the locally employed civilians on board on the date that the locally employed civilian service is withdrawn will be entitled to receive all appropriate termination benefits, including redundancy pay where relevant"; she also stated that payment "will not be dependent upon whether or not the individual concerned is subsequently given a United Nations contract" as it was considered to be an entitlement that arose on the termination of the Civilian Establishment and Pay Office agreements with the locally employed civilians. The Deputy Command Secretary responded by a memorandum dated 26 May 1995 that he considered the memorandum of 22 May 1995 by the Chief Administrative Officer of UNFICYP to give him "the financial authority to make redundancy payments on behalf of the United Nations to all United Nations locally employed civilians 'on board' on 30 June 1995". He advised that the arrangements for billing the United Nations for those payments would be handled by the Foreign and Commonwealth Office in London.

21. Based on the above exchange of correspondence, the United Kingdom made payments to 164 locally employed civilians in July 1995. Subsequently, in October 1995, the United Kingdom informed the United Nations that it would stop payments of termination benefits unless an agreement was reached with the United Nations for reimbursement of the totality of the termination benefits. The United Kingdom's legal position was based on its contention that the decision to terminate the locally employed civilians had been made by the United Nations. The management of UNFICYP and the Field Administration and Logistics Division continuously objected to that argument, maintaining that it was the United Kingdom's unilateral decision to discontinue providing the service that had created the problem.

22. The parties had reached a legal impasse when the Field Administration and Logistics Division referred the issue of termination benefits to the General Legal Division of the Office of Legal Affairs in October 1995. The Field Administration and Logistics Division requested advice from the Office of Legal Affairs on the issue of whether the cost of the termination benefits should be shared between the United Nations and the United Kingdom according to the same cost-sharing formula that had been used to pay their salaries (see para. 6 above). Having reviewed past cases of individual terminations of locally employed civilians, which showed that payments had been allocated between the United Nations and the United Kingdom based on the same apportionment as the salaries and other benefits had been, the Office of Legal Affairs endorsed the principle of cost-sharing of termination payments as reasonable and fair.

23. Under that principle, the United Nations and the United Kingdom would cost-share terminations using the same formula adopted by the parties to cost-share salary payments to locally employed civilians, following the suggestion made by the Chief Administrative Officer of UNFICYP in her memorandum of 21 November 1994. Thus, the United Nations would pay 100 per cent of the cost of termination benefits to those locally employed civilians who were funded 100 per cent by the United Nations and 30 per cent of the cost of those whose salaries were cost-shared between the United Nations and the United Kingdom (on the basis of 70/30 per cent). A review of the documentation indicates that during late 1995 the Advisory Committee on Administrative and Budgetary Questions had been informed that in connection with the conversion of the locally employed civilians to United Nations local staff, legal advice from the Office of Legal Affairs had been sought regarding the question of liability for terminal benefits for the locally employed civilians and the issue had not yet been resolved (A/50/802, para. 40).

24. The Office of Programme Planning, Budget and Accounts had by that time become more fully involved in the issue of termination benefits in late 1995 in connection with the preparation of budget documents related to UNFICYP, including the establishment of new posts for local staff in UNFICYP. From that point on, the Office also assisted in the negotiations with the United Kingdom. The Secretary-General's report on the financing of UNFICYP for the period from July 1997 to June 1998 included an estimate of the United Nations share of the cost of those benefits – $5,284,000 – which was based on the principle

suggested by UNFICYP, recommended by the Office of Human Resources Management and endorsed by the Office of Legal Affairs in January 1996 (see A/51/755/Add.1). The report also included background information on the request and alluded to the negotiations between the United Nations and the United Kingdom.

25. The Memorandum of Understanding provided no guidance and this legal "logjam" continued into 1997, with neither party conceding. The negotiations with the United Kingdom focused on the legal issue of who was the "real" employer of locally employed civilians; in the United Kingdom's view, UNFICYP was. The United Nations maintained that there was no employment relationship between the United Nations and the locally employed civilians. Finally, in March 1997, the United Kingdom informed the United Nations that while the legal issue of liability remained "inconclusive", the United Kingdom was prepared:

> "... in the interests of resolving this issue in an expeditious fashion, while addressing the attendant political problems in Cyprus, to agree to your proposal that the costs of making all terminal benefits and redundancy payments due to the locally employed civilians should be divided between the United Nations and the United Kingdom on a pro-rata basis in accordance with the cost-share formula previously used to apportion the salaries of the individuals concerned."

26. A review of the documents indicates that the Advisory Committee on Administrative and Budgetary Questions was subsequently informed that, following review and advice by the Office of Legal Affairs on the issue of liability for termination benefits to locally employed civilians, representatives of the United Kingdom and the United Nations had agreed that benefits due to locally employed civilians should be allocated on the same basis as the arrangements/formulas for meeting the costs of the four categories of locally employed staff (see para. 6 above and the report of the Advisory Committee on the financing of UNFICYP (A/51/851 and Corr.1, para. 36)). Taking note of the financial obligation arising from the agreement between the United Kingdom and the United Nations, the Advisory Committee stated in its report that the General Assembly would have to decide how the United Nations share should be financed (para. 37). Subsequently, in its resolution 51/235, the Assembly decided that the total United Nations share of $5,284,000 would be funded by assessed ($1,131,000) and voluntary ($4,153,000) contributions. As noted above, the Assembly also requested an evaluation of the events and circumstances that led to the United Nations having responsibility for termination pay to the locally employed civilians in UNFICYP.

IV. Evaluation

27. The unilateral decision of the United Kingdom to hire local staff under Civilian Establishment and Pay Office regulations, with all the attendant benefits, and to withdraw from providing locally employed civilians left both the Office of Human Resources Management and the Field Administration and Logistics Division with a series of legal and financial issues not of their making. The issue of payment of termination benefits was predominantly a labour contract legal issue. But for the United Nations, which was mandated to continue its mission in Cyprus, the issue was significantly seen as a human resources one owing to the time constraint and operational requirements. The question of legal liability was considered by the Chief Administrative Officer of UNFICYP in her November 1994 memorandum – but it was only later that the advice of the Office of Legal Affairs was sought, and then only on the narrow issue of the appropriateness of the cost-sharing payments. The financial implication of the legal liability for the United Nations insofar as termination benefits were concerned had not been perceived as a looming legal issue when the United Kingdom withdrew from providing civil labour for UNFICYP, which had been only loosely agreed in the 1979 Memorandum of Understanding. Although it was acknowledged by the Chief Administrative Officer of UNFICYP that taking over the United Kingdom's contractual arrangements was the most cost-effective solution, her concern that it would create personnel problems and violations of Staff Rules was confirmed by the Office of Human Resources Management in its assessments.

28. Experienced United Nations personnel grappled with the issue of termination payments for nearly three years. The decision taken was neither arbitrary nor wasteful in that serious and detailed consideration was given to a range of options. That consideration led to the only viable option considering the human resource policies of the Organization. While the assumption of the Civilian Establishment and Pay Office arrangements – by all accounts – would have been less costly than the option selected, as it would have avoided the need to pay at one time to all locally employed civilians the accrued termination pay, it would have caused serious personnel, legal and financial implications to the United Nations. Specifically, exceptions to the Staff Rules for recruitment, retention, seniority, determination of remuneration and so on would have been required. OIOS

considers that once the Organization decided to undertake such exceptions on such a large scale, the United Nations would have opened itself to the establishment of a precedent for all future mission recruiting, including negotiations with local trade unions and appeals of decisions affecting those personnel issues based on different, even contrary, determinations on the same issues, by the United Kingdom. Therefore, the decision taken by the Organization to harmonize the locally employed civilians employment status with existing United Nations rules is seen as appropriate. Lack of harmonization in one mission may well have also caused the United Nations to renegotiate in other missions on the basis of national labour laws with the attendant problems of the United Nations having to deal with local union disputes, if and when they arose, which in turn would undermine the privileges and immunities the Organization is entitled to.

29. Documentation made available to OIOS makes it very clear that the United Kingdom had taken a unilateral decision and would not agree, under any conditions, to continue to provide the service. Once that decision was taken, numerous issues, including several not previously resolved except on an ad hoc basis between UNFICYP administration and the United Kingdom Command Secretariat, had to be addressed by the Organization. During continuing discussions between UNFICYP and the Command Secretariat, some of those issues were resolved. The issue of termination payments, because of the associated costs, could not be resolved in the field. Faced with the view, on both sides, that termination benefits had to be paid to the locally employed civilians, once the Civilian Establishment and Pay Office contracts were terminated, neither wanted to assume the financial responsibilities.

30. Critically, the Memorandum of Understanding of 1979 did not provide details of the allocation of expenses. Instead, in paragraph 4, it simply provides: "The United Kingdom will provide to the other elements of UNFICYP, *at the United Nations expense, unless otherwise indicated*, the logistic support listed and defined in the annex to this Memorandum of Understanding" (emphasis added). The annex provides in paragraph 11 for civil labour: "Administration of locally engaged civil labour on behalf of UNFICYP within the total numbers, and in accordance with the terms agreed between HQ UNFICYP and the UK authorities". This lack of written agreement as to exactly what was to be provided to the locally employed civilians for which the United Kingdom or the United Nations was to be responsible led directly to the conflict over termination payments in both the individual cases of termination and the locally employed civilians status change occasioned by the withdrawal of the United Kingdom. Without a written agreement as to the terms of employment, including for payment of salaries and termination, both parties could, and did, identify significant areas of disagreement. Given those circumstances, the United Nations and the United Kingdom ultimately each decided to resolve the question by accommodating to the cost-sharing formula previously employed.

31. OIOS did not find any impropriety in the actions of the United Nations staff members. The disagreement between the United Kingdom and the United Nations might have been mitigated if the basic document, which incorporated the agreement between the parties, had been drafted with a view to minimizing the risks to both parties by spelling out their respective responsibilities and liabilities for the entitlement of the support staff. Nevertheless, in the view of OIOS, important lessons learned emerge: Firstly, in large measure, the problem was caused by the lack of precision in the four-page Memorandum of Understanding (inclusive of the two-page annex). The respective obligations of the two parties for the contractual employees' various benefits and entitlements, including termination benefits, were not defined. This allowed for contradictory interpretations by the parties. Secondly, as legal and financial issues were apparent at the initial stage of problem definition and consideration of options, it would have been advisable for the Department of Peacekeeping Operations to have obtained assessments of possible legal and financial liabilities to the Organization from the Office of Legal Affairs and the Office of Programme Planning, Budget and Accounts, respectively.

V. Conclusions and recommendations

32. Important lessons learned emerge from these events. The issue of payment of termination benefits was predominantly a legal labour contract issue. But for the United Nations, which was mandated to continue its mission in Cyprus, the issue was significantly seen as a human resource one, owing to the time constraint and operational requirements. The financial implication of the legal liability for the United Nations insofar as termination benefits were concerned had not been perceived as a looming legal issue when the United Kingdom withdrew from providing civil labour for UNFICYP, which had been only loosely agreed in the 1979 Memorandum of Understanding. While the assumption of the Civilian Establishment and Pay Office arrangements – by all accounts – would have been less costly than the option selected, as it would have avoided the need to pay at one time to all locally employed civilians the

accrued termination pay, it would have caused serious personnel, legal and financial implications to the United Nations. In large measure, the problem was caused by the lack of precision in the four-page Memorandum of Understanding. The respective obligations of the two parties for the contractual employees' various benefits and entitlements, including termination benefits, were not defined. This allowed for contradictory interpretations by the parties. As legal and financial issues were apparent at the initial stage of problem definition and consideration of options, it would have been advisable for the Department of Peacekeeping Operations to have obtained assessments of possible legal and financial liabilities to the Organization from the Office of Legal Affairs and the Office of Programme Planning, Budget and Accounts, respectively.

33. In the light of the above conclusions, OIOS makes the following recommendations:

- *Recommendation 1.* For matters such as these that present significant legal issues and financial liability to the Organization, OIOS recommends to the Department of Management and the Department of Peacekeeping Operations that programme managers consult the Office of Legal Affairs and the Office of Programme Planning, Budget and Accounts at the initial stages to assess the risks to the Organization (Rec. No. IV97/107/01);

- *Recommendation 2.* OIOS recommends to the Department of Management and the Department of Peacekeeping Operations that in the future either the United Nations enter into Memorandums of Understanding that provide the details of the agreement between the parties or, alternatively, that additional written agreements be prepared within the framework of the terms of the Memorandums of Understanding that so provide (Rec. No. IV97/107/02).

(*Signed*) Karl Th. **Paschke**
Under-Secretary-General
for Internal Oversight Services